

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

Symbiont.io, LLC,

Debtor.

)
) Chapter 11
) Case No. 22-11620 (PB)
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)
)

**SO-ORDERED STIPULATION RESOLVING LM FUNDING AMERICA INC.’s
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Symbiont.io LLC (“Debtor”) and LM Funding America Inc. (“LMF”), by and through their undersigned counsel, hereby enter into this stipulation (the “Stipulation”) resolving LMF’s *Motion for an Order to Lift the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1) and Demand for Adequate Protection Pursuant to 11 U.S.C. § 363(e)* [Docket No. 10] (the “Motion”).¹

WHEREAS, on or around December 1, 2021, the Debtor and LMF entered into a certain Secured Promissory Note and Security Agreement (the “Note”), whereby LMF agreed to loan Debtor up to \$3,000,000, with a Maturity Date of December 1, 2022;

WHEREAS, the Note is secured by a lien on substantially all the Debtor’s assets (the “Collateral”);

WHEREAS, as of January 10, 2023, the Debtor owes \$2,355,068.49 on account of the Note, including accrued but unpaid interest through January 11, 2023, plus documented legal fees in the amount of \$114,078 for a total of \$2,470,023.21(collectively, the “Current Note Balance”);

WHEREAS, the Note will continue to bear interest after the date of this Stipulation in accordance with its terms at a rate of \$876.71 per day (the “Per Diem Rate”) and legal fees through the Funding Deadline (defined below), with the amount to be determined on the Funding

¹ Any capitalized terms not otherwise defined herein shall have the meanings ascribed in the Motion.

Deadline is to be made to LMF;

WHEREAS, on or around December 1, 2022, Debtor commenced this chapter 11 case;

WHEREAS, on or around December 20, 2022, LMF filed the Motion;

WHEREAS, on January 3, 2023, the Debtor filed an objection to the Motion [Dkt. No. 15];

WHEREAS, on January 6, 2023, LMF filed a Reply in Support of the Motion [Dkt. No. 20];

WHEREAS, on January 9, 2023, Debtor filed a letter with this Court announcing (i) that it expected to soon receive payment of two invoices: (a) an invoice in the amount of \$105,000 from SWIFT (the “SWIFT Invoice”) and (b) an invoice in the amount of \$265,625 from State Street Bank and Trust (the “State Street Invoice” and, together with the SWIFT Invoice, the “Invoices”), and (ii) that it had entered into a Letter of Intent (the “LOI”) with Morse Labs Inc. (“Morse”) concerning a contemplated transaction that would, *inter alia*, provide the funds necessary to repay the Note in full, and that Debtor had received a \$250,000 deposit (the “Deposit”) in connection with the contemplated transaction;

WHEREAS, at the hearing on the Motion held on January 10, 2022 (the “Hearing”), this Court stated it anticipated treating the hearing as a preliminary hearing on the Motion and anticipated scheduling a final evidentiary hearing at a later date;

WHEREAS, at the Hearing, Debtor informed LMF and this Court that it was pursuing two options with Morse to repay the Note:

(1) Morse (or an entity controlled by Morse) may purchase the Note (the “Buyout Option”);

or

(2) Morse will serve as Debtor’s DIP lender and, through such DIP financing and this

Court's approval, Debtor will repay Debtor in full (as defined below) (the "DIP Option");
and

WHEREAS, at the Hearing, Debtor and LMF reached an interim resolution of the issues raised in the Motion.

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND UPON COURT APPROVAL HEREOF ORDERED THAT:

1. Debtor is prohibited from using, and shall not use, any Cash Collateral of LMF without further consent from LMF and this Court;

2. Debtor shall provide to LMF documentary evidence that Debtor's counsel currently possesses the Deposit in said counsel's escrow account (the "Escrow Account");

3. Within twenty-four (24) hours of receipt of payment of each of the Invoices, Debtor shall provide to LMF proof that it has received the funds and that such funds have been deposited in the Debtor's debtor-in-possession bank account;

4. On or before 5:00 p.m. EST on January 24, 2023 (the "Funding Deadline"), LMF shall provide the Debtor the final payoff number, and the Debtor shall provide to LMF evidence that funds sufficient to repay the Current Note Balance plus the Per Diem Rate in full (the "Repayment Funds") have been deposited in the Escrow Account;

5. On or before 5:00 p.m. on the Funding Deadline, Debtor shall file with this Court a status report ("Status Report") indicating whether the Repayment Funds were received, and (a) if the Buyout Option has been selected, then the Repayment Funds shall be released to LMF by the Funding Deadline; (b) if the DIP Option has been selected, then the Debtor shall (i) make all commercially reasonable efforts to have a motion to approve such financing heard on or before

January 26, 2023, and (y) upon this Court's entry of an order approving such financing, Debtor shall release the Repayment Funds to LMF within twenty-four (24) hours;

6. If Debtor is unable to consummate a transaction by the Funding Deadline sufficient to repay LMF the Repayment Funds, on January 25, 2022, the Debtor consents to entry of an order lifting the automatic stay and agrees that Bankruptcy Rule 4001(a)(3) does not apply; provided however, that the Funding Deadline shall be automatically extended where the Debtors have timely filed a motion for approval of financing in connection with consummating the DIP Option and such motion is not heard before the Funding Deadline. The Debtor and LMF agree to attend the status conference that the Court has set for January 26, 2023, to discuss any issues arising out of this Stipulation.

DATED: January 12, 2023
New York, New York

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SO ORDERED: January 13, 2023

/s/ Philip Bentley
HON. PHILIP BENTLEY
UNITED STATES BANKRUPTCY JUDGE